IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No.634 of 1980

to

FIRST APPEAL No.645 of 1980

For Approval and Signature:

Hon'ble MR.JUSTICE M.C.PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

HARICHAND ZAVERDAS - A PARTNERSHIP FIRM
Versus
KHODA JETHA

Appearance:
MR HB SHAH for Appellant No. 1
MR BR PARIKH for Respondent No. 1
MR RAJKUMAR N VORA for Respondent No. 1

CORAM : MR.JUSTICE M.C.PATEL

Date of decision: 25/10/2002

COMMON JUDGEMENT

1. These appeals, by the original plaintiff in Civil Suit Nos.3695 to 3706 of 1977, are directed against the common judgement and decree dated 30.01.1980 passed in the said suits by the learned Judge, City Civil Court, (7th Court) dismissing the said suits.

2. The plaintiff is a Partnership Firm. By a registered sale deed dated 04.11.1961 the plaintiff firm purchased 599 square yards of land out of the total area of 6171 square yards of Survey No.342/A, together with some other land from one Naran Pitha and his son, who were the owners of the said land. After the plaintiff purchased the land, they started a Brass Copper utensil factory, known as Swastik Factory. The partners of the plaintiff firm were copper smiths (Kansaras). The said land was known as Kansara Compound. Adjoining the land, there was a Chawl, known as Naran Pitha's Chawl.

3. On 17.10.1977, the plaintiff filed 12 suits in the City Civil Court alleging that the defendant, in each suit, had put huts on an area of about 20 square yards of the suit land, without the plaintiff's consent and permission and the defendants had committed trespass. According to the plaintiff, he had served notice dated 01.08.1977 upon the defendants to remove trespass and to vacate the land but the same had not been complied with. They, therefore, prayed for a decree directing the defendants to remove the huts and handover possession of the land to the plaintiff. There was also a prayer for mesne profits from the date of filing of the suits till the delivery of the land. It may be noted that there was no averment in the notice or the plaint as to when the defendants had committed trespass.

4. The defendant, in each suit, resisted the suits by filing the written statement. The defence was the same in all the suits. According to the defendants, they were tenants on the suit land, they having taken the land on lease from one Naranbhai, the predecessor-in-title of the plaintiff. The defendants contended that after having taken the land on lease, they had put huts at their own expenses. They pleaded that they had become tenants of the plaintiff. They denied that they had committed trespass on the suit land. In the alternative, they contended that they had been on the suit land for more than 15 years and they had become owners by adverse possession.

5. After recording the oral and documentary evidence led by the parties, the learned Judge came to the conclusion that the defendant, in each suit, had taken

the said land on lease, though not from the original owners and the evidence warranted a finding that the defendants had taken the land, below their huts, on lease from Harichand Zaverdas, the partner of the plaintiff firm. He, therefore, held that each of the dependent was the tenant of the suit land below his hut. He, therefore, negatived the plaintiff's case that the defendant, in each suit, was a trespasser and dismissed the suits. The plaintiff has, therefore, filed these appeals challenging the said judgement and decree of the learned City Civil Court.

6. On behalf of the plaintiff, three witnesses were examined. The first witness was Amulakh Gangaram Kansara, Exh.55, who was a partner of the plaintiff firm. The second witness was Prahaladbhai Khodidas Patel, Exh.63, who said that there were no huts when he contested election in 1965 but there were huts when he contested election again in 1975. He had, for the first time, seen the huts on the suit land in November, 1975. The third witness was Dayabhai Shamji, Exh.74. He claimed to be living in the same area and said that the huts were put on the land about four years back, which would mean 1976 since he gave evidence on 22.01.1980.

7. The defendants in Civil Suit Nos.3698, 3701, 3702, 3704, 3699, 3705, 3706, 3696, 3702 of 1977 examined themselves as witnesses. They also examined three other witnesses, namely, Khubchand Kamlaprasad Jain, Ex.99, Talsi Nathu, Exh.135 and Kabhabhai Jivabhai, Exh.136 who supported the defendants' case that the defendants had been living on the suit land for 15 to 17 years. The defendants also led considerable documentary evidence, described in the judgement as a large mass of documents. The documents consisted of letters, ration cards, vaccination notices, etc.

8. As stated earlier, there was no averment in the notice or the plaint that the defendants had committed trespass but Amulakh Gangaram Kansara, the partner of the plaintiff firm said in his evidence for the first time that the defendants had encroached on the suit land in 1975. However, the learned Judge, after considering the documents produced by the defendants, recorded the findings that the defendants had not come there within a year or two but they had definitely been there for more than 15 years before the suits were filed. The learned Judge was not inclined to place reliance on the evidence of the plaintiff's witnesses - Prahaladbhai and Dayabhai. As for the evidence of Prahaladbhai, the learned Judge observed that he was instrumental in the plaintiff

purchasing the suit land and was a witness to the sale deed. To that extent, this witness could be said to be slightly interested in the plaintiff. As for the evidence of Dayabhai, the learned Judge observed, inter alia, that he was serving as a driver with the plaintiff, though for short durations and that, his evidence cannot be taken as its face value.

9. In para 36 of the judgement, the learned Judge, after considering the documentary and oral evidence produced by the defendants, said that he was convinced that the defendants had been on the suit land for 15-17 years before the suits were filed and they did not come on the suit land in 1975 or some time prior thereto as alleged by the plaintiff, and that fact by itself was a very weighty circumstance in favour of the defendants, especially, when neither in the notice, nor in the plaint the plaintiff had pinpointed the time when the defendants committed trespass in the suit land. Though the defendants had no documentary evidence to show that they were tenants on the suit land and they did not have receipts for payment of rent with them, the learned Judge observed that the defendants were poor, almost illiterate mill-hands and factory hands staying in huts, paying meagre rent and their landlord was a big person and such a landlord would not like to allow the evidence of tenancy between him and the defendants to come into existence. The fact that the plaintiff had suffered the defendants on the suit land for more than 15-17 years would indicate that the defendants were tenants and they had been inducted by Harichand Zaverdas, the deceased partner of the plaintiff firm, around the time he started or constructed the plaintiff's factory on a part of the land purchased by the plaintiff firm in 1961. This, in the opinion of the learned Judge, was the only rational inference to be drawn from the proved facts of the case.

10. Mr.H.B.Shah, learned counsel appearing for the appellant submitted that the learned Judge has committed an error in recording the findings against the plaintiff. He submitted that the learned Judge was in error in dismissing the suits in view of the evidence of Prahaladbhai and Dayabhai, who had been examined on behalf of the plaintiff. He contended that there was no mention in the sale deed that there was any hut on the land, when the plaintiff purchased the same. He also contended that in some of the postal communications and vaccination certificates, produced by the defendants, the address was Naran Pitha's Chawl which was not on the suit land but was adjacent to the suit land. He also submitted that though the defendants pleaded that they

had taken the suit land from the original owner Naran Pitha, but at the trial, they tried to establish that the suit land had been taken on lease from Harichand Zaverdas. All these contentions were also raised before the learned trial Judge and he has considered the same in detail in his elaborate judgment. I agree with him that Dayabhai's evidence could not inspire confidence for the reasons given by him and Prahalad's evidence could not be taken at its face value, particularly, when the documentary evidence shows that the defendants had been on the land for more than 15 years. As for the mention of Naran Pitha's Chawl as the address in some documents produced by the defendants, the learned Judge accepted their explanation that previously they had been residing with some of their relatives in the Chawl and in the ration cards and in the other documents their old address continued to be shown. The plaintiffs were silent till the suit went to trial as to when the defendants committed the alleged trespass, and it was, for the first time, when Amulakh Gangaram Kansara was examined, they came out with the case that the defendants had committed trespass in 1975. However, there was sufficient documentary evidence to show that the defendants had been on the land for more than 15 years.

11. In the facts and circumstances of the case, the inference drawn by the learned Judge that the defendants had taken the land on lease from Harichand Zaverdas cannot be said unreasonable. The decision of the Supreme Court in the case of Arjun Lal Gupta and Ors. Vs. Mriganka Mohan Sur and Ors., AIR 1975 Supreme Court 207 cited on behalf of the appellant has no application to the facts of the present case. The learned counsel for the appellant commented on the conduct of the defendants, who had not deposited any rent even after they were held to be tenants by the trial Court. However, though the trial Court declared them to be tenants, the appellant did not accept them as such and filed these appeals and hence there was no question of their depositing any rent. The learned counsel for the respondent stated that they were ready to pay the rent. In any case the issue has to be decided on the basis of the evidence on record. In my opinion, there is no warrant for interference with the findings recorded by the learned trial Judge.

12. The result is that, all the appeals fail and are dismissed. No order as to costs.

[M.C.PATEL, J]

'Bhavesh'